

GEORGE INNES.

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DECEMBER 15, 1831.

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FEBRUARY 15, 1830.

MR. CAMBRELENG, from the Committee on Commerce, made the following

REPORT:

*The Committee on Commerce, to whom was referred the petition of George Innes, report:*

The petitioner was employed by the surveyor of the port of New York, in 1822 and 1823, to mark and prove teas, liquors, &c. When his account was transmitted to the Treasury, the comptroller decided, (see a letter 6th March, 1823, copy of which is annexed,) that, as the petitioner and others, who had, under the orders of the surveyor, rendered a similar service, were inspectors of the customs, they could not perform the duties of an inspector of the revenue, according to the act of 7th May, 1822. The payments were therefore not allowed. The committee referred this question again to the Treasury, and received from the Secretary the annexed answer, 12th January, 1830. They concur in the view taken of this case by the Secretary, "that there is no incompatibility in the employments, and that the compensation provided by law ought to be allowed." The petitioner claims for services rendered from July, 1822, to August, 1823, inclusive. The committee believe him to be lawfully and equitably entitled to compensation from July, 1822, to March, 1823, inclusive, and report a bill authorizing the adjustment of his account for his services within that term. They have included the whole of his services in March, because the last item, which related to a Canton cargo, must have been under the orders of the surveyor in the early part of that month, or the returns could not have been made, nor so great a labor performed within that time. The remainder of the account is not allowed. After the letter of the comptroller, whether his construction of the law be correct or not, the surveyor was not authorized to employ inspectors of the customs to perform the duties of inspectors of the revenue.

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TREASURY DEPARTMENT,

*Comptroller's Office, March 6th, 1823.*

SIR: In examining your accounts of the customs for the 3d quarter of the last year, it is discovered that, in a number of instances, (see the vouchers returned herewith, Nos. 5, 18, 20, 23, and 32,) you paid persons in the double capacity of inspectors of the *customs*, and inspectors of the *revenue*.

These being distinct officers, and there being a wide difference in their respective duties, it has been decided that, according to the letter and spirit of the 14th section of the act of the 7th May last, an inspector of the *customs*, in the districts mentioned in that section, cannot perform the duties of an inspector of the *revenue*, and receive the compensation of the latter.

The payments in question cannot, therefore, be allowed.

It is also observed that vouchers No. 45, and from 56 to 83, also returned herewith, are deficient in the verification required by the 16th section of the act referred to.

In voucher No 80, there are two dollars overcharged, and in No. 82, ten cents.

It is noticed that Robert Hunter, in stating his account of compensation, charges for attending coasting, and measuring vessels.

Will you have the goodness to explain how these distinct duties have been thus blended?

Although there is no objection to your paying the inspectors, gaugers, weighers, &c. monthly, yet it must be considered as an arrangement of your own, and only one account, embracing the transactions of the whole quarter, must be rendered to the Treasury.

Respectfully,

JOSEPH ANDERSON,

Comptroller.

JONATHAN THOMPSON, Esq.

TREASURY DEPARTMENT,

January 12th, 1830.

SIR: The memorial of George Innes, referred to this department by the direction of the Committee of Commerce, was duly received, and I submit, for the consideration of the committee, such information as the department is possessed of, in relation to the claim of the petitioner, and also the views now entertained of the law upon which it is founded.

The petitioner states, that he being an inspector of the customs, was deputed by the surveyor of New York to perform certain duties appertaining to the surveyor's office as inspector of the revenue, viz: proving, marking, and making returns to the surveyor, of wines, spirits, and teas, for which he claims compensation in addition to his per diem allowance as inspector of the customs.

The 38th section of the act of March 2d, 1799, designates the services for which the petitioner claims compensation, as follows: all distilled spirits, wines, and teas, shall be landed under the inspection of the surveyor or other officer acting as inspector of the revenue for the port, and *such inspectors of the customs as shall be deputed by him* for that purpose, and *not otherwise*, on pain of forfeiture thereof. The 39th section of the same act directs, that the *officers of inspection* of any port where distilled spirits, wines, and teas, shall be landed, shall, upon the landing thereof, and as soon as the casks, &c. containing them, shall be inspected, gauged, or measured, branded, or otherwise marked, in durable characters, the several casks, &c.; and the 2d section of the same act, prescribes the compensation to be given to the "deputies of the inspectors aforesaid," for marking and returning the

said casks. Such was the law, until the act of 7th May, 1822; and inspectors of the customs receiving full pay, as such, were deputed as inspectors of the revenue, for which service they received the additional compensation provided for marking, &c. This act provides that, in the ports of Boston, New York, Philadelphia, Baltimore, Charleston, Savannah, and New Orleans, no person shall be an inspector who, at the same time, holds any other office in the collection of the customs in either of said ports; and has been construed to render the office of inspector of the customs of these ports incompatible with a deputation from an inspector of the revenue; but such a construction is by no means clear. The act of 1799, as before remarked, directs that this service shall be performed by the surveyor, or other officer, acting as inspector of the revenue, or such *inspectors of the customs as he may depute* for that purpose. The act of May, 1822, neither forbids the deputation of an inspector of the customs, nor authorizes the employment of any other person; it merely prescribes that no person shall be an inspector who, at the same time, holds any other office. The two acts are perfectly reconcilable on the supposition that Congress did not consider a deputation of this nature as an *office*, which would not be an unreasonable construction of the act of 1822, even if it were less necessary to reconcile it to the unrepealed provisions of the act of 1799. The deputy as such being responsible only to his principal, and the latter to the Government, it may be supposed that the reliance for official obligation, is referrible to his responsibility as inspector of the customs. If this view be correct, there is no incompatibility in the employments; and if the employments are not incompatible, it follows of course, that the compensation provided by law ought to be allowed.

But the law has received a construction by the accounting officers, which excludes the compensation claimed in such cases. This decision would seem, however, to conform more strictly to what the law ought to be, as to compensation, than to what it actually is. There can be no good reason for allowing by law to an inspector of the customs full compensation as such, while he is employed in other service, for which an additional and adequate compensation is given. But in the present case, the service rendered by the petitioner, before the receipt of the comptroller's letter of the 6th March, 1823, was performed under the law, with an expectation that the usual allowance would be made. It is proper, however, to observe, that a part of the service for which compensation is claimed by him, was rendered, as appears by the petitioner's account, after the collector was informed that no allowance would be made to inspectors of the customs for services as deputy inspectors of the revenues.

The memorial is returned.

I have the honor to be,

Very respectfully,

Your obedient servant,

S. D. INGHAM,

*Secretary of the Treasury.*

Hon. C. C. CAMBRELENG,

*Chairman of the Committee on Commerce,*

*House of Representatives of the United States.*

